



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY NORTHERN REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FOXCROFT SCHOOL FOR DIESEL FUEL DISCHARGE AT FOXCROFT SCHOOL

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Foxcroft School for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
6. "Foxcroft" means Foxcroft School, a non-stock corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Foxcroft School is a "person" within the meaning of Va. Code § 62.1-44.3
7. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred. The discharge occurred at Foxcroft School Building 5, located at 22407 Foxhound Lane in Middleburg, Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
11. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Foxcroft is a college-preparatory boarding and day school.
2. On December 16, 2020, Loudoun Water staff informed Foxcroft staff that an unknown amount of diesel fuel was entering the Foxcroft School Wastewater Treatment Plant (Plant). Upon discovery, the Plant operator diverted flow to an on-site holding tank.
3. DEQ staff responded to the site on December 17, 2020, and observed discharged product from an Underground Storage Tank (UST) in the basement area of Foxcroft School Building 5. Product was also observed in the Plant and a petroleum sheen was seen adjacent to the Plant Outfall in Goose Creek. DEQ staff also observed product in a drainage ditch which flows off of the Foxcroft property, and leads to an unnamed tributary of Goose Creek.
4. The fire department responded to the scene and Foxcroft retained remedial contractors. 1,761 gallons of free phase oil were recovered by the contractor. It is estimated that 1,761 gallons of heating oil were discharged from the UST in Building 5.
5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
6. On January 14, 2021, the Department issued Notice of Violation No. 2020-12-N-001 to Foxcroft for a discharge of oil to land and state waters.
7. On January 26, 2021, Foxcroft submitted a written response to the NOV. The response noted that the discharge was the result of a defective relay switch. The defective relay switch caused heating oil to continuously flow and not shut off. Foxcroft also noted that this tank had been recently installed and had been routinely maintained. As a result of the discharge, Foxcroft also noted that it installed a back-up overflow cutoff switch and an alarm and strobe light outside of the building in question to alert staff to potential issues in the future.
8. On March 26, 2020, Department staff met virtually with representatives of Foxcroft to discuss the discharge, emergency response, containment and clean-up, and future actions.
9. Foxcroft submitted an Initial Abatement Report to DEQ on February 26, 2021, and a Site Characterization Report on April 7, 2021.
10. Initial abatement measures were performed by Foxcroft's contractor between December 17, 2020, and January 19, 2021. Eight soil borings were installed along the exterior of

Building 5; Six hand auger borings were installed downstream of storm sewer outfalls; soil samples were taken from each boring location to monitor for Total Petroleum Hydrocarbons (TPH) Diesel Range Organics; and sub slab flushing points were installed in Building 5 and a flushing event was conducted. Moderate levels of petroleum compounds and petroleum volatile organic compounds were identified in the soil and elevated petroleum compounds were concentrated in soil samples adjacent to the UST in Building 5.

11. As part of the SCR, Foxcroft's contractor recommended the following actions: 1) continued ventilation of Building 5 to address odors; 2) continued monitoring and maintenance of sorbent materials in the furnace sump room of Building 5, stormwater outfalls, and the wastewater treatment plant; 3) conduct a second flushing injection event in the furnace room basement to further address petroleum product below the building slab; 4) complete a tank tightness tank of the UST in Building 5; and 5) conduct further evaluation of elevated petroleum contamination in the vicinity of the UST.
12. In correspondence dated April 20, 2021, DEQ responded to the findings of the SCR. The SCR indicated that localized levels of residual petroleum remains around the area of the sump discharge and that occasional low-level discharges of petroleum to surface and waste water drains may continue to occur for a limited period of time. Based on the high risk of additional petroleum discharges and the presence of petroleum saturated soils adjacent to the heating oil UST in Building 5, DEQ recommended removal of the UST and surrounding impacted soils.
13. Based on the results of December 17 DEQ site visit, and documentation submitted on January 24 and April 7, 2021, the State Water Control Board concludes that Foxcroft has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(11), above.
14. In order for Foxcroft to complete its return to compliance, DEQ staff and representatives of Foxcroft have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Foxcroft School, and Foxcroft School agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,564.24 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Foxcroft School shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Foxcroft School shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Foxcroft School for good cause shown by Foxcroft School or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Foxcroft School admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Foxcroft School consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order
5. Foxcroft School declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Foxcroft School to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the

Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Foxcroft School shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Foxcroft School shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Foxcroft School shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Foxcroft School. Nevertheless, Foxcroft School agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Foxcroft School has completed all of the requirements of the Order;
 - b. Foxcroft School petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Foxcroft School.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Foxcroft School from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Foxcroft School and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Foxcroft School certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Foxcroft School to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Foxcroft School.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Foxcroft School voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021

Thomas A. Faha, Regional Director
Department of Environmental Quality

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Foxcroft School voluntarily agrees to the issuance of this Order.

Date: 8/4/21 By: Deborah Anderson COO
(Person) (Title)
[Foxcroft School]

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 4th day of August, 2021, by Deborah Anderson who is COO of Foxcroft School on behalf of the corporation.

Lynnette M. Saunders
Notary Public

7648239
Registration No.

My commission expires: June 30, 2023

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Foxcroft School shall:

1. UST Removal

Submit an SCR Addendum (SCRA) to DEQ by September 20, 2021. The SCRA shall include a discussion of ongoing discharge monitoring, the proposed injection and flushing events, and a report on the removal of the 5,000 gallon underground storage tank. Once removed, Foxcroft shall submit documentation to DEQ indicating that the tank has been properly removed in accordance with 9 VAC 25-580-320, within 30 days of completion. In addition, Foxcroft shall provide documentation to DEQ within 30 days of installation of the new UST, that this UST has been installed to comply with all applicable UST regulations regarding tank registration, release detection and alarm equipment that will help reduce the risk of a future discharge being released to the environment. Foxcroft shall respond to any requests for information from DEQ remediation staff in the time frame specified by remediation staff.

2. Contact

Unless otherwise specified in this Order, Foxcroft School shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193**